

BETHEL C. VERNON

IBLA 78-437

Decided October 16, 1978

Appeal from decision of the Director, Bureau of Land Management, dismissing the protest of the dependent resurvey of sec. 19, T. 13 S., R. 7 W., Willamette meridian, Oregon. (Gp. No. 872, Oregon).

Hearing ordered.

1. Surveys of Public Lands: Generally—Surveys of Public Lands: Dependent Resurveys

The dependent resurvey is designed to restore the original conditions of the official survey according to the record. It is based, first, upon identified corners and other acceptable points of control, and second, upon the restoration of lost corners by proportionate measurement in harmony with the record of the original survey. Corners established by the original survey should be located, if possible, by considering all the relevant evidence and not simply one or two factors.

2. Administrative Practice—Administrative Procedure: Hearings—Hearings—Rules of Practice: Hearings—Surveys of Public Lands: Dependent Resurveys

Where there exist factual questions about the location of section and subdivisional corners in a dependent resurvey, the Board of Land Appeals may order a hearing pursuant to 43 CFR 4.415 to resolve these questions.

3. Administrative Procedure: Burden of Proof—Hearings: Burden of Proof—Rules of Practice: Burden of Proof—Surveys of Public Lands: Dependent Resurvey

In challenging the Government resurvey, appellant has the burden of establishing

by clear and convincing evidence that the resurvey is not an accurate retracement and reestablishment of the lines of the original survey.

APPEARANCES: Bruce L. Engel, Esq., Philomath, Oregon, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Bethel C. Vernon appeals from a decision of the Director, Bureau of Land Management, signed by the Chief, Division of Cadastral Survey, dated April 24, 1978, dismissing his protest of the dependent resurvey of sec. 19, T. 13 S., R. 7 W, Willamette meridian, Oregon. Specifically, appellant charges that the dependent resurvey failed to locate monuments establishing the corner of sections 17, 18, 19, and 20 and the north and south 1/4 section corners of section 19. Appellant requests a hearing to determine whether BLM properly rejected evidence of certain objects offered by appellant as the original monuments established in the surveys of 1856 and 1891.

Under Special Instructions issued May 27, 1975, the State Director for Oregon, BLM, authorized and directed a dependent resurvey of a portion of the west boundary and subdivisional lines of T. 13 S., R. 7 W., Willamette meridian, Oregon. Said survey was to examine, retrace, and reestablish points of control and surveys consistent with the Manual of Instructions for the Survey of the Public Lands of the United States (1973), hereafter cited as Manual, (1973).

The prior surveys conducted by the Government disclose the following facts which are not in dispute. In 1856, some of the subdivisional lines in T. 13 S., R. 7 W., including the line between sections 19 and 20, were surveyed by Dennis Hathorn. Hathorn also established the corner of sections 17, 18, 19, and 20 as shown on the official plat of survey approved December 5, 1856.

In 1891, Robert O. Collier surveyed the remainder of the subdivisional lines of the township, including the remaining boundaries of section 19, and remonumented the corner of sections 17, 18, 19, and 20, as shown on the official plat of survey approved June 14, 1892.

In the survey of 1891, Collier was not able to recover a wood post set by Hathorn to mark the corner of sections 17, 18, 19, and 20. In its place, Collier placed a stone measuring 10 inches by 10 inches by 8 inches and marked it with three notches on its south edge and five notches on its east edge.

Appellant contends that he has found both the wood post and the stone and further claims that each is marked in a manner consistent with their use as a corner monument for the above sections.

Representatives of BLM examined the objects alleged by appellant to be the section corner monuments and rejected each. The wood post was rejected, because BLM felt it did not appear to have been marked with an ax and was not likely to have survived the elements for 121 years. The stone offered by appellant was rejected, because BLM found the markings thereon to be mere scratches which could be easily duplicated by pocket knife. Rejection of these objects was further supported by BLM's inability to locate the bearing trees established by Hathorn and Collier in relation to the corner for sections 17, 18, 19, and 20.

With respect to the south 1/4 section corner of section 19, appellant claims to have found a 3-inch by 3-inch impression in the soil which marks the location of the original 1/4 corner post established by Collier in 1891. Appellant further claims that the location established by the soil impression is consistent with certain bearing trees established by Collier.

BLM rejected appellant's evidence after an examination of the alleged bearing trees revealed no visible marks which would indicate Collier's bearing trees.

The BLM cadastral survey, conducted in 1975, reported it found no evidence of the original corner monuments of sections 17, 18, 19, and 20 or of the south 1/4 section corner of section 19. These corners were therefore treated as lost and reestablished by proportionate measurement in the dependent resurvey.

[1] The dependent resurvey is designed to restore the original conditions of the official survey according to the record. It is based, first, upon identified original corners and other acceptable points of control, and, second, upon the restoration of lost corners by proportionate measurement in harmony with the record of the original survey. Manual, 1973.

Titles, areas, and descriptions should remain absolutely unchanged in the typical dependent resurvey. Alfred Steinhauer, 1 IBLA 167, 171 (1970).

In making a retracement or dependent resurvey of public lands, the corners established by the original survey should be located, if possible, by considering all the relevant evidence and not simply one or two factors. Rubicon Properties, Inc., A-30748 (1968).

Inasmuch as a dependent resurvey seeks to restore the original conditions of an official survey by reliance upon identified original corners, we feel it is appropriate to grant the appellant a hearing to determine the validity of the monuments and corner locations which he claims to have found. These issues of fact are the province of the hearing officer.

[2] Where there exist factual questions about the location of section and subdivisional corners, this Board may order a hearing pursuant to 43 CFR 4.415 to resolve these questions. Domenico A. Tussio, 30 IBLA 92 (1977); Frank Lujan, 30 IBLA 95 (1977); Joe S. Dent, 18 IBLA 375 (1975); U.S. v. Hudspeth, 384 F.2d 683 (1967).

This case shall be transferred to the Hearings Division, Office of Hearings and Appeals, of this Department for assignment to an administrative law judge for a hearing to be held in conformity with the rules in 43 CFR 4.430 through 4.439.

[3] Appellant, in challenging the Government resurvey, has the burden of establishing by clear and convincing evidence that the resurvey is not an accurate retracement and reestablishment of the lines of the original survey. Henry O. Woodruff, 24 IBLA 190 (1976).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside, a hearing is ordered, and the case is referred to the Hearings Division, Office of Hearings and Appeals, for a hearing before an administrative law judge at which evidence regarding the location of the corner of sections 17, 18, 19, and 20 and the north and south 1/4 section corners of section 19 shall be received. Thereafter, the judge will submit a recommended decision to this Board and to the parties, and afford the parties an opportunity to file briefs with this Board within 30 days after receipt of his recommended decision.

Douglas E. Henriques
Administrative Judge

We concur.

Edward W. Stuebing
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

